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IN THE

Supreme Court of the United States

No. 973

RICHARD H. M. SWANN
and
SUPERVISOR OF ELECTIONS
of Dade County, Florida

Appellants,

-vs-

TOM ADAMS, Secretary of State of Florida;
E. L. GATES, Supervisor of Registration of
Broward County, Florida; and
W. B. FREEMAN, Supervisor of Registration
of Monroe County, Florida

Appellees.

JURISDICTIONAL STATEMENT

PAUL & SAMS
1314 First National Bank Building
Miami Florida 33131
Attorneys for Appellant,
Richard H. M. Swann

THOMAS C. BRITTON
County Attorney, Dade County
1626 Dade County Courthouse
Miami, Florida
Attorney for Appellant,
Supervisor of Elections of
Dade County, Florida

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Appellees.

JURISDICTIONAL STATEMENT

This is an appeal by RICHARD H. M. SWANN, the Plaintiff below, and the Supervisor of Elections of Dade County, Florida,[1] a Defendant below, from an Order of the United States District Court for the Southern District of Florida entered on December 23, 1965 finding a legislative apportionment act unconstitutional under the rule of *Reynolds v. Sims*, 377 U.S. 533, as depriving Appellants and others similarly situated of due process and equal

[1]Martin Braterman has succeeded Claude Brown in this capacity.

protection as guaranteed by Section 1 of the Fourteenth Amendment of the Constitution of the United States, but nevertheless refusing to enjoin the application of such legislative enactment. This statement is submitted to show that the Supreme Court has jurisdiction of this appeal, that the District Court has failed to follow the judgment issued by the Supreme Court in this case in June, 1964 (*Swann v. Adams*, 378 U.S. 553), and that important questions requiring immediate action by this Court are presented.

Opinions Below

The Order appealed from is unreported. Earlier opinions in this case are reported as *Swann v. Adams*, 378 U.S. 553; *Sobel v. Adams*, 214 F. Supp. 811 (S. D. Fla. 1963); and *Sobel v. Adams*, 208 F. Supp. 316 (S. D. Fla., 1962). Copies of the Order of the Court below and of the Supreme Court's opinion in *Swann v. Adams* are printed herein as Appendices A-1 and A-2.

Jurisdiction

This suit was filed in March, 1962 pursuant to Title 42, U.S.C., Sections 1983 and 1988 and Title 28, U.S.C., Section 1343. Pursuant to the provisions of Title 28, U.S.C., Section 2281, a three-judge court was invoked. This appeal is from an Order of the District Court entered December 23, 1965. Notice of Appeal by Appellant Swann was filed in the District Court on December 29, 1965. Appellant Supervisor of Elections of Dade County, Florida, joined in the appeal on December 30, 1965. The jurisdiction of the Supreme Court to review the Order of the District Court is conferred by Title 28, U.S.C., Section

1253. The following decisions sustain the jurisdiction of the Supreme Court to review on direct appeal the judgment in this case: *Reynolds v. Sims*, 377 U.S. 533; *Baker v. Carr*, 369 U.S. 186.

Statutes Involved

Directly involved are the provisions of House Bill 19-XX and House Bill 35-XX enacted by the Florida Legislature, which became law on July 7 and July 9, 1965, respectively. House Bill 19-XX, an Appendix to the Order of the Court below printed herein as Appendix A-1, is reprinted herein as Appendix B-1. House Bill 35-XX, is printed herein as Appendix B-2. House Bills 19-XX and 35-XX are Florida Laws, ch. 65-2440 and ch. 65-2446, respectively, and are Chapters 10.011 - 10.051, Florida Statutes, 1965, and 10.061, Florida Statutes, 1965, respectively. Since the provisions of the Senate Bill 10-X(63) and House Joint Resolution 5-X(63) enacted by the Florida Legislature in 1963, which were held to be unconstitutional by this Court in *Swann v. Adams*, 378 U.S. 553, have nevertheless been left in effect by the District Court until November 8, 1966, such Bills are printed herein as Appendices C-1 and C-2, respectively. These Bills are Chapters 10.01 - 10.04, Florida Statutes, 1965.

Questions Presented

1. Does the refusal of the District Court to enjoin for the 1967 biennial session of the Florida Legislature the reapportioment plan adopted by the 1965 Florida Legislature and held unconstitutional by the same District Court and the refusal to adopt a valid apportionment plan for such 1967 biennial session or provide other appropriate

relief deny to Appellant Swann and those similarly situated due process of law or equal protection of the law in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States?

2. Does the decision of the District Court to leave in effect until April, 1969 a plan of reapportionment, which is partly the product of the Court's decree and partly the product of the 1965 Florida Legislature but which has been held by the District Court to be unconstitutional, deny to Appellant Swann and all those similarly situated due process of law or equal protection of the law in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States?

3. Does the decision of the District Court to leave in effect until November, 1966[2] a reapportionment plan for the Florida Legislature found unconstitutional on June 22, 1964 by the Supreme Court of the United States in *Swann v. Adams*, 378 U.S. 553, and thereafter to permit the reapportionment plan adopted by the 1965 Florida Legislature which the same District Court found unconstitutional to take effect and to remain in effect until the legislative session commencing in April, 1969 constitute a refusal to comply with the direction of the Supreme Court in *Swann v. Adams*, to take action "consistent with the views stated in our opinions in Reynolds v. Sims and other cases relating to state reapportionment decided along with Reynolds" and deny to Appellant Swann and those similarly situated due process of law or equal protection of law in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States?

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[2]The 1965 Legislature remains in office and draws salaries until November, 1966.

4. Does the refusal of the District Court to enjoin the division into districts for purposes of election to the State House of Representatives of only one of the 67 counties in Florida where such districts are not based on population discriminate against and deny to Appellant Swann and residents of that county similarly situated due process of law or equal protection of the law in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States?

5. Does the refusal of the District Court to enjoin the division into senatorial districts of only one county of the 67 Florida counties where such senatorial districts are not equal in population and are identical with old malapportioned congressional districts which have heretofore been declared unconstitutional discriminate against and deny Appellant Swann and all other residents of such senatorial districts similarly situated due process of law or equal protection of the law in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States?

6. Does the refusal of the District Court to enjoin that part of the 1965 Florida Reapportionment Plan which allocates one state senator each to certain small Florida counties when no such small county has a population sufficient to entitle it to a senator, deny to Appellant Swann and those similarly situated due process of law or equal protection of the law in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States?

7. Does the refusal of the District Court to enjoin certain "grandfather" provisions of the 1965 Florida Re-

apportionment Plan which permit certain State Senators elected under an unconstitutional reapportionment plan to represent in the 1967 biennial session of the Florida Legislature districts constituted differently from those from which they were originally elected deny to Appellant Swann and those similarly situated due process of law or equal protection of the law in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States?

STATEMENT OF THE CASE

Appellant Swann filed this action seeking reapportionment of both houses of the Florida Legislature in accordance with constitutional requirements. After final hearing the District Court on July 23, 1962 found

> "... the existing provisions of the Constitution and statutes of the State of Florida which relate to the apportionment for the nomination and election of the members of the Senate and House of Representatives of the Legislature of Florida are invidiously discriminatory against the plaintiff." *Sobel v. Adams*, 208 F. Supp. 316, 317.

The Court found "the constitutional and statutory provisions of the State of Florida, which provide for the apportionment and reapportionment, are null, void, and prospectively inoperative." *Sobel v. Adams*, 208 F. Supp. 316, 318. The Court, however, refusing to do the necessary reapportioning itself, turned the matter back to the state, noting:

> "Should the state fail or neglect to perform this

> obligation with that dispatch which the urgency of the matter requires, then the less desirable reapportionment by judicial decree would be required. It seems that there is ample time for a valid reapportionment to be made and become effective prior to the time for the convening of the regular legislative session in 1963." *Sobel v Adams*, 208 F. Supp. 316, 318.

The apportionment found unconstitutional was such that a majority of the Florida Senate was elected from counties having 12.3% of the state's population and a majority of the House of Representatives was elected from counties having 14.7% of the state's population.

A special session of the Florida Legislature was then convened, which enacted a reapportionment amendment to the Florida Constitution for submission to the electorate at the general election in November, 1962. Under this amendment the percentage of the Florida population required to elect a majority of the House of Representatives was increased from slightly under 15% to 27%, but the percent of population required to elect a majority of the Senate remained between 12 and 13%.

At this point, in its opinion dated September 5, 1962, the District Court back-tracked from its previous opinion and found:

> "... that the rationality of a legislative apportionment may include a number of factors in addition to population... [That] Under the plan before us the House of Representatives would be apportioned by a formula in which population is

> heavily weighted. Because of this we think that population need not be a major factor in the apportionment of the other House.

The Court concluded that if the electorate should adopt the amendment proposed,

> "... the State will have then adopted a rational plan of reapportionment, free from invidious discrimination." *Sobel v. Adams*, 208 F. Supp. 316, 321, 323, 324.

On November 6, 1962 the voters of Florida rejected the proposed constitutional amendment. At the same time they elected state legislators for the 1963 biennial legislative session on the basis of the legislative apportionment which had previously been declared prospectively null, void and inoperative by the District Court. The following day Appellant Swann again sought relief. On November 9, 1962 another special session of the Florida Legislature convened. It failed to take any action whatsoever. On December 10, 1962 Appellant Swann again sought judicial relief. Again a special session of the Florida Legislature was convened. This time the Legislature adopted a new plan, both as a temporary statutory reapportionment and as a permanent constitutional reapportionment to be submitted to the voters in November, 1964. The statutory reapportionment was pursuant to an advisory opinion of the Florida Supreme Court on January 30, 1963, which held that the District Court decision in *Sobel v. Adams*, 208 F. Supp. 316, had removed the prior restriction that any reapportionment plan had to be submitted to the voters for approval as a constitutional amendment. *In re Advisory Opinion to the Governor*, 150 So.2d 721; see also *Jor-*

dan v. Green, 173 So.2d 448 (Fla. Sup. Ct. 1965). The new reapportionment plans, which are printed herein as Appendices C-1 and C-2, provided for election of a majority of the House of Representatives by 27.4% of the population (or 29.6% after the expiration of certain "grandfathering" provisions) and provided for election of a majority of the Senate by 14% of the population.

Appellant Swann on February 4, 1963 again sought judicial relief, but to no avail, for on February 7, 1963 the District Court found the statutory and constitutional reapportionment valid and compatible with the requirements of the Federal Constitution. *Sobel v. Adams*, 214 F. Sup. 811. This was, of course, a foregone conclusion from the previous approval by the District Court of the plan rejected by the voters in November, 1962. No other alternative existing, Appellant Swann appealed to the Supreme Court.

On June 22, 1964 the Supreme Court reversed and remanded for further proceedings "consistent with the views stated in the Courts' opinion in Reynolds v. Sims and other cases relating to state reapportionment decided along with Reynolds." *Reynolds v. Sims* had stated:

> "It is enough to say now that, once a State's legislative apportionment scheme has been found to be unconstitutional, it would be the unusual case in which a Court would be justified in not taking appropriate action to insure that no further elections are conducted under the invalid plan." 377 U.S. at 585.

On July 20, 1964 Appellant Swann petitioned for re-

lief consistent with *Reynolds v. Sims*, Among other things, Appellant Swann sought to enjoin the Secretary of State of the State of Florida from placing the proposed constitutional amendment on the ballot in November, 1964. This constitutional amendment was identical to the statutory reapportionment found unconstitutional by this Court on June 22, 1964.

On October 21, 1964 the District Court refused to enjoin the Secretary of State of Florida from placing this constitutional amendment on the ballot, thus requiring a popular vote on an amendment which would have been unconstitutional if adopted. Nevertheless, on November 3, 1964 the voters of Florida rejected the proposed constitutional amendment by a more than two-to-one margin.

On November 12, 1964 Appellant Swann filed another petition, pointing out that since the proposed constitutional amendment had been defeated, there was now no basis, *de jure* or *de facto*, for a 1965 legislative session inasmuch as there was neither statute nor constitutional amendment providing for a valid apportionment plan under which the Legislature could function. Appellant Swann simultaneously moved for an early hearing date as to the legality of any Legislature to be convened in 1965 or any legislation enacted by it. No action having been taken by the District Court during the next 45 days, on December 29, 1964 Appellant Supervisor of Elections of Dade County, Florida, filed a petition also requesting an immediate hearing on all pending matters. This petition also pointed out that the validity of any legislation which the Florida Legislature as illegally constituted might enact during the regular session to commence April, 1965 would be in doubt unless the Court acted to resolve that doubt.

The District Court ignored all requests for a hearing and on January 8, 1965 the District Court entered an order deferring all matters raised in the petitions of either Appellant until the conclusion of the next biennial session of the unconstitutionally apportioned Legislature, which convened on April 6, 1964. The order recited that the matters deferred would be *promptly* reconsidered if the Legislature of Florida had not validly reapportioned itself by July 1, 1965 in accordance with the standards laid down by this Court.

During the course of the regular session the Legislature addressed a request to the Attorney General of the State of Florida asking for his advice and guidance in the matter of reapportioning the Legislature. The Attorney General rendered his opinion to the Legislature during May, 1965, and advised the Legislature that

> "The essence of the Supreme Court ruling is that every member of the Legislature must represent substantially, with no more than a 10 to 15 percent departure from absolute mathematical equality, the same number of people so that each individual's right to vote for Legislators will have the same weight."

A special reapportionment session of the Florida Legislature was convened in June, 1965. No results were reached and on June 22, 1965 the District Court entered an order requesting all parties to the cause and amici curiae to submit reapportionment plans to the Court by July 6, 1965, and gave the Legislature until July 1, 1965 to "validly" reapportion itself. In reviewing subsequent events, it must be kept in mind that the District Court

itself has found that the Legislature did not *validly* reapportion itself by July 1, 1965 or thereafter.

On June 29, 1965 the Florida Legislature enacted House Bill No. 19-XX calling for a 58-member Senate and a 109-member House of Representatives. House Bill No. 19-XX became law without the Governor's approval on July 7, 1965. The Legislature enacted House Bill No. 35-XX which divided Dade County, the largest county in the State, into eight electoral districts, based on voter registration, not population. This bill became law on July 9, 1965, without the Governor's approval. The reapportionment plan adopted by these two statutes was constitutionally defective in the following respects:

(i) the population variance among districts for election of members of the House of Representatives is more than 4 to 1 and the districts vary from a minimum of 58% less than the mathematically perfect constituency to a maximum of 69% in excess of the mathematically perfect constituency;

(ii) the population variance of senatorial districts is almost 2 to 1 and the senatorial districts vary from a minimum of 23% less than the mathematically perfect constituency to a maximum of 19% in excess of the mathematically perfect constituency;

(iii) the plan creates districts for election to the Florida House of Representatives in only one county of the 67 counties of Florida — Dade County — and breaks it into districts not on the

basis of population but on the basis of voter registration;

(iv) the plan provides that certain senators elected in 1964, despite the fact that their constituencies had been eliminated by the reapportionment plan, would nevertheless be "grandfathered" a senatorial seat until November, 1968;

(v) the plan provides that certain senators elected in 1964, despite the fact that their constituencies had been expanded, contracted or radically altered by the reapportionment plan, would nevertheless be allowed to represent new senatorial districts until November, 1968 — the worst of these instances is that of a senator elected in 1964 by the population of less than 7% of the senatorial district which he is designated by the reapportionment to represent; thus more than 93% of the population of this new senatorial district have never been given an opportunity to vote for or against this senator who will represent them;

(vi) the plan creates, as to several senatorial districts, a "satellite county" plan under which, when more than one senator is assigned to a senatorial district of two or more counties, one senator must reside in each county in the district regardless of population before any county is permitted to have more than one senator; and

(vii) the plan districts for the Florida Senate

> only one county of the 67 counties of Florida — Dade County — and gives two senators to each of two congressional districts in that county after these congressional districts had previously been held unconstitutional by the same District Court.

On July 6, 1965 the Appellants filed a joint petition asking the District Court to hold the newly enacted reapportionment plan unconstitutional. This petition included a proposed plan of fair apportionment. Numerous other proposed plans were submitted by amici curiae ranging from the League of Women Voters and academic experts on the question of proper apportionment to individuals. Nevertheless, no action whatsoever was taken by the District Court until October 5, 1965, when the Court ordered oral argument on all pending matters for November 2, 1965. The argument, however, was restricted to the actual *parties* to the case. No amicus curiae was orally heard. After oral argument, the Court did nothing at all for another 51 days.

On December 23, 1965 the Court entered the Order here appealed from. The opinion stated in part as follows:

> "The plan of apportionment of the Florida legislature, as made by HB 19-XX enacted at its special session in 1965, in both the Senate and House of Representatives does not meet the requirements of the Equal Protection Clause of the Federal Constitution as construed and applied in Reynolds v. Sims, supra, and other decisions of the Supreme Court."

Nevertheless the Court found that:

> "The apportionment made by said statute, as herein modified, is approved as an interim plan for a period ending sixty days after the adjournment of the 1967 regular session of the Florida legislature; . . . ."

On one of the two issues of "grandfathering" the Court struck from the plan certain provisions for retention of Senators. All other specific objections to the reapportionment plan were rejected or ignored. The net result of this decision is that, if allowed to stand, in April, 1967 the second consecutive unconstitutional biennial session of the Florida Legislature will meet *after it has been judicially determined to be apportioned in a manner constitutionally violative to Appellants' rights.*

THE QUESTIONS ARE SUBSTANTIAL

> *The refusal of the District Court to enjoin for the 1967 biennial session of the Florida Legislature the reapportionment plan adopted by the 1965 Florida Legislature and to leave that plan in effect until April, 1969, and the refusal of the District Court to adopt a valid reapportionment plan for the 1967 biennial session of the Florida Legislature, repudiates the principles of Reynolds v. Sims.*

The Attorney General told the Florida Legislature, *before* it adopted House Bills 19-XX and 35-XX, that "no more than a 10 or 15 percent departure from absolute mathematical equality" was permissible. Certainly it can

be agreed that this test set forth the largest permissible deviation and the District Court itself cast doubt on the permissibility of a 15% variation from the norm. Yet the Florida Legislature, after this instruction, adopted a variation of more than 4 to 1 in House districts and almost 2 to 1 in Senatorial districts, based on 1960 census figures. The populations of Florida's urban counties have continued in the past five years to grow rapidly while those of rural counties have remained static. For example, the population of Dade County as of April 1, 1965 was estimated at 1,118,000, a five year growth of 19.6 percent. Since the discrimination apparent on the basis of 1960 population data from the Legislature's plan obviously favors rural counties, it follows that the *present* range of discrimination is greater than stated above and is increasing significantly each year.

In *Reynolds v. Sims*, 377 U.S. 533, this Court ruled that "seats in both houses of a bicameral state legislature must be apportioned on a population basis" to comply with the "basic constitutional standard". At different places in the various opinions that immediately follow the *Reynolds* opinion in 377 U.S., the Supreme Court elaborated on this basic standard as follows:

> (1) "We realize that it is a practical impossibility to arrange legislative districts so that each one has an identical number of residents, or citizens, or voters. Mathematical exactness or precision is hardly a workable constitutional requirement." (at 577). (2) The "predominant basis of representation in the two state legislative bodies is required to be the same — population." (at 576) (3) A state must "make an

honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable." (at 577) (4) Both houses of a state's legislature must be apportioned "substantially on a population basis." (at 734) (5) A "good faith effort" must be made "to establish districts substantially equal in population." (at 735 n. 27) (6) "(I)t is neither practicable nor desirable to establish rigid mathematical standards for evaluating the constitutional validity of a state legislative apportionment scheme . . . Rather, the proper judicial approach is to ascertain whether, under the particular circumstances existing in the individual state whose legislative apportionment is at issue, there has been a faithful adherence to a plan of population-based representation, with such minor deviations only as may occur in recognizing certain factors that are free from any taint of arbitrariness or discrimination." (at 710) But the resulting apportionment must not "submerge" the equal-population principle or dilute it "in any significant way." (at 578, 580).

The conclusion reached by the Court below — that the 1965 reapportionment plan of the Florida Legislature does not comply with *Reynolds* — is self-evident. Yet the Court refused to right the admitted wrong to Appellants, despite the clear statement by this Court in *Swann v. Adams*, that action be taken "consistent with views stated in our opinions in Reynolds v. Sims and other cases relating to state reapportionment decided along with Reynolds."

The decision of the District Court to leave in effect until November, 1966 a reapportionment plan already found unconstitutional by the Supreme Court and thereafter to permit the effectuation of an unconstitutional reapportionment plan violates the judgment of the Supreme Court in Swann v. Adams.

On June 22, 1964 the Supreme Court in *Swann v. Adams*, 378 U.S. 553, reversed and remanded the District Court's decision holding constitutional the present Florida apportionment plan and ordered the District Court to take action "consistent with the views stated in our opinions in Reynolds v. Sims and other cases relating to state reapportionment decided along with Reynolds". Nevertheless the apportionment plan thus held unconstitutional by this Court has already remained in effect 578 days after the Supreme Court rendered its decision and will remain in effect for an additional 291 days from this date unless the District Court's action shall be reversed.

Not only has the District Court permitted to exist for over two years a reapportionment plan found unconstitutional by the Supreme Court, but it has further violated the judgment of the Supreme Court by permitting to remain in effect until the 1969 biennial session of the Florida Legislature a further plan, coming into existence in November, 1966, which the District Court itself finds not to be "consistent with the views stated in [the Supreme Court's] opinions in Reynolds v. Sims and other cases relating to state reapportionment decided along with Reynolds". This flagrant refusal by the District Court to comply with the direction of the Supreme Court in *Swann v. Adams* denies to Appellants their constitutional

rights and fully warrants the relief sought herein by the Appellants.

The districting for the Florida House of Representatives of only one county of the 67 counties in Florida on the basis of registered voters, not population, violates Appellants' constitutional rights.

The Court below held that the division into districts of a single county (Dade County) of Florida's 67 counties for purposes of election to the House of Representatives is valid, even though those districts are based not upon population but upon registered voters. This is erroneous. House Bill 35-XX (Chapter 10.061, Fla. Stats. 1965) divides Dade County into eight districts composed of numbers of election precincts. This division was made by dividing the total registered voters in the county into eight districts of precincts containing approximately equal numbers of registered voters. Counsel for the Supervisor of Elections of Dade County, Florida, admits herewith that precincts are not divided according to population, but are based upon other considerations, including convenience of polling places (See ch. 98.031, Fla. Stats., 1965).

Nothing in *Fortson v. Dorsey*, 379 U.S. 433, upholding districting of certain of the state counties in the circumstances there presented, either implicitly or explicitly approved the districting of only a single county of a state upon any basis at all. But in any case, voter registration — at least without proof that it is no more than a "minor deviation" from population — is not a permissible means of apportioning or districting. A legislator represents all the people in his district, not just those who voted or those

who were eligible to vote. Registration to vote depends on statutory rules as to age and length of residence, as well as statistical factors such as race, sex, economic and social position. Any division on the basis of number of registered voters is not constitutionally permissible (see *Ellis v. Mayor and City Council of Baltimore*, 352 F.2d 123 (4th Cir. 1965)), and the District Court, in approving this manner of division, must be reversed.

The "grandfathering" by the Florida Legislature in its reapportionment plan of Senators with no senatorial districts and of Senators with radically altered senatorial districts, the basing of senatorial districts on Congressional districts previously judicially determined to be unconstitutional, and the creating of senatorial districts in which the Senators must reside in underpopulated "satellite" counties, all violate Appellants' constitutional rights.

The Florida Legislature chose four separate means of discrimination with respect to the Senate, districting of one county on the basis of congressional districts previously held unconstitutional by the same District Court, two methods of illegal "grandfathering", and "satellite county" provisions.

For the Senate the Legislature in its reapportionment plan chose again to district only one county (Dade County). This county had previously been divided into two congressional districts (ch. 8.01, Fla. Stats.), which districting was successfully challenged as unconstitutional in this same District Court *(Gong v. Burns*, U.S.D.C., S.D. Fla. No. 64-143-Civ, May 11, 1964) on the basis of the

Supreme Court's decision in *Wesberry v. Sanders*, 376 U.S. 1. Despite the fact that these two congressional districts had been previously declared to be unconstitutionally based, the Florida Legislature in its reapportionment plan assigned two senatorial districts to each of these congressional districts. Peculiarly enough, the Legislature has since completely revised these two congressional districts in view of the District Court's *imprimatur* in *Gong v. Burns, supra* (ch. 65-2441, Fla. Laws 1965; ch. 8.01, Fla. Stats., 1965). Despite the District Court's own previous decision in *Gong v. Burns*, the District Court refused to hold this provision of the Florida Legislature's reapportionment plan unconstitutional.

The Florida Legislature also enacted the two "grandfathering" provisions. Even the District Court could not accept the worse of these "grandfathering" clauses — which permitted the continuance for two years as Senators persons who had *no* senatorial district — and struck it. But the District Court allowed to stand the almost equally bad "grandfathering" clause permitting continuance for two years as Senators persons assigned to an expanded, contracted, or radically altered district from the one which elected him. As far as Dade County is concerned, the Florida Legislature thus "grandfathered" a Senator from Monroe County (the Florida Keys) who was elected by a population of less than 10% of the district of which he is now designated as representative.

The "satellite county" provision of the Florida Legislature's reapportionment plan provides that one of the South Dade County — Monroe County (one of the two unconstitutional congressional districts) senators must be a resident of Monroe County. Assuming *arguendo*

that the Florida Legislature had the right to district a Dade-Monroe County complex, certainly it could not constitutionally require that Monroe County, with a population of less than 10% of the senatorial district, have a resident senator.

Abuse of Discretion

The District Court acknowledged the obvious and found that the Florida Legislature's reapportionment plan is unconstitutional within the rule of *Reynolds v. Sims*. Nevertheless, it refused to enjoin the continued operation of this plan, and thereby guarantees that in April, 1967 another unconstitutional biennial session of the Florida Legislature will meet. This is a gross abuse of discretion which would well warrant the Supreme Court's use of its mandamus powers to enforce its decision in *Swann v. Adams*, 378 U.S. 553, and at the minimum, requires reversal on this appeal.

The Florida Legislature convenes in regular session only once every two years, in the spring of every odd-numbered year. The next regular session of the Florida Legislature to convene *after* the period specified by the District Court will be in April, 1969. The effect of the Court's decree, therefore, is not only to guarantee for the second consecutive biennial session that an unconstitutional legislature will enact Florida's laws, but also to deny the people of Florida constitutional representation for a minimum of seven years after the Supreme Court decision in *Baker v. Carr*, 369 U.S. 186, for a minimum of five years after the Supreme Court decision in this very case, *Swann v. Adams*, 378 U.S. 553, and for a minimum of three years the District Court's own declaration of un-

constitutionality. The only justification asserted for this lengthy and serious deprivation of fundamental rights is to afford "a further opportunity to the Florida legislature to adopt a constitutionally acceptable apportionment" (Appendix A-1, p. App. 5) for the fifth time.

It is respectfully submitted that the asserted justification lacks rational or other basis and constitutes a wholesale deprivation of Appellants' constitutional rights.

Under the circumstances recited, it is respectfully submitted that to deprive an entire state's population of the right to be represented in a regular session of a legislature fairly and constitutionally apportioned until April, 1969 cannot be justified, within the range of reasonable discretion, merely to afford a malapportioned Florida Legislature still another opportunity to reapportion itself. Appellants readily concede the desirability of a state legislature performing the difficult task of reapportionment itself, but Appellants believe that the great deference and unprecedented judicial restraint heretofore exercised by the District Court has been ignored, scorned and repudiated by the Florida Legislature's own refusal to reapportion itself according to Federal constitutional requisites again and again and again. The people of Florida have done everything in their power to obtain fair reapportionment by repeatedly and overwhelmingly rejecting at the polls the unfair and discriminatory plans submitted to them. Unless judicial relief becomes now available, their right to fair representation in a legislature that can transact the regular business of the State on their behalf in regular session becomes irreparably lost until 1969 at the earliest. While judicial restraint is a necessary quality

under our federal system, judicial restrain cannot be allowed to become judicial refusal to act.

Clearly the District Court would not have acted beyond the proper limits of judicial restraint if it had ordered its own temporary reapportionment plan into effect after this last, ultimate failure of the Florida Legislature. See *Reynolds v. Sims*, 377 U.S. 533, at 586. In effect, this is what the District Court has done by modifying and tailoring the latest and last of a series of unconstitutional plans passed by the Florida Legislature, and then decreeing the modified plan to be in effect until 60 days *after* the 1967 regular session (i.e., until August, 1967). Appellants submit that having determined to place its own temporary plan into effect, the District Court seriously abused its discretion in not providing for a temporary interim plan that meets the requirements of the Fourteenth Amendment. Certainly the deprivation of equal protection by Federal Court decree is no more palatable or lawful than by state legislative action. Compare *Hurd v. Hodge*, 334 U.S. 24, with *Shelley v. Kraemer*, 334 U.S. 1.

Having determined to take action, the District Court should have acted, as did the District Court in *Reynolds v. Sims*, within the limits of the Constitution. As the District Court itself stated in *Sobel v. Adams*, 208 U.S. 316, 318, over three years ago:

> "The plaintiffs and the class represented by them are entitled to such relief as will afford them equal protection of the laws. Before the entry of a final judgment or decree the Court should have the benefit of further evidence and argument on

> the manner in which relief should be awarded. The more desirable means of accomplishing the necessary reapportionment is through state action. The duty to place the state in compliance with the requirement of the United States Constitution rests primarily and rests heavily upon the state itself. *Should the state fail or neglect to perform this obligation with that dispatch which the urgency of the matter requires, then the less desirable reapportionment by judicial decree would be required.* It seems that there is ample time for a valid reapportionment to be made and become effective prior to the time for the convening of the regular legislative session in 1963." [emphasis added]

At the very least, the District Court should have required an immediate special session of the Legislature. If, at such session, a valid reapportionment plan for the election to the 1967 Legislature were to be adopted, the Court would stay its hand. If not, the District Court itself could and should reapportion. There is still ample time for relief before the November, 1966 elections.

CONCLUSION

For the reasons stated, this Court has jurisdiction of this action and should reverse the Order below and again order the District Court to reapportion the State of Florida in a manner consistent with the Constitution of the United States.

Respectfully submitted,

D. P. S. Paul
P. D. Thomson
Paul & Sams
1314 First National Bank Building
Miami, Florida 33131

Neal Rutledge
Rutledge & Milledge
111 N. E. First Street
Miami, Florida 33131

Richard F. Wolfson
316 North Miami Avenue
Miami, Florida

Attorneys for Appellant
Richard H. M. Swann

Thomas C. Britton
County Attorney, Dade County
1626 Dade County Courthouse
Miami, Florida

Stuart Simon
Assistant County Attorney
1626 Dade County Courthouse
Miami, Florida

Attorneys for Appellant,
Supervisor of Elections of
Dade County, Florida.

APPENDICES

APPENDIX A-1

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

No. 186-62-M-CIVIL-DD

RICHARD H. M. SWANN,

Plaintiff,

v.

TOM ADAMS, Secretary of State of the State of Florida, et al.,

Defendants.

Before JONES, Circuit Judge, and McRAE and DYER, District Judges

PER CURIAM:

Before this Court for determination is the question of the constitutional validity of a statute of Florida enacted at a 1965 Special Session of its Legislature, designated as HB 19-XX, providing for the apportionment of the membership of the Florida State Senate and House of Representatives. A copy of the statute is annexed as an appendix. The statutory apportionment as made by HB 19-XX has been subjected to several grounds of at-

tack. It is urged that the provisions of Section 1(3) are invalid. This Section continues in office those senators, whose districts have been abolished, for the remainder of the term to which they were elected, which would be until the general election of November, 1968. It is contended that the provisions of Section 1(5) of the Act cannot be upheld. This Section requires that where two or more counties are assigned more than one senatorial district, no two senators representing any district comprised of such counties shall reside in the same county until each county has a senator residing and qualified to vote therein. It is said that the subdistricting of Dade County but not other counties is an unwarranted discrimination. The most serious of the questions presented are those which deal with the one man-one vote, equality of representation principle. Other issues are raised but are, in the Court's opinion, without merit and without sufficient plausibility to require discussion.

It seems apparent that the carrying forward into a newly constituted legislature those senators, previously elected, who no longer have a constituency cannot be upheld. To permit these senators to serve who will no longer be representing any electors would result in giving an added weight to the votes of the electors of those areas from which they were originally chosen. To eliminate this inequality the Act (HB 19-XX) must be modified by the deletion of Section 1(3).

It is not shown that Section 1(5) is unconstitutional. The effect of this Section is to prevent the election of two or more senators from any county until a senator has been elected from each county where two or more counties are combined in two or more senatorial districts. By way of

example, Duval County, with a 1960 population of 455,411, is combined with Nassau County, with a population of 17,189, and St. John's County, with a population of 30,034, in senatorial districts numbered 16, 18, 21, 31, 33 and 58. Thus it is provided that Nassau, with about three percent of the population of the districts and St. John's, with about six percent of the population of the districts, will each have one-sixth of the senatorial representation from the multi-county districts. The provision relates to residence of the senators and not to the voting strength of those who elect them. Although each county of the multi-county districts is entitled to have a senator resident within it, the tenure of such senators depends upon the district-wide electorate. Such senator represents, not the county where he resides, but the district. The weight of the voter in the most populous of the multi-county districts (Duval County in the stated example) for senators to represent him is approximately equal in weight to voters in the less populous counties. This question is the same as was decided in Fortson v. Dorsey, 379 U.S. 433, 85 S.Ct. 498, 13 L.Ed. 2d 401, where several districts were within a county. It has not been suggested that the residence requirement in the Florida statute was intended to minimize or cancel out the voting strength of racial or political elements of the voting population, or that it would have such effect. Cf. Fortson v. Dorsey, supra.

Dade and Monroe Counties comprise six senatorial districts under the statute. Two districts, numbered 12 and 39, are composed of that part of Dade County comprising the third congressional district as it existed on June 1, 1965. Two other districts, numbered 40 and 41, are made up of that portion of Dade and Monroe Counties comprising the fourth congressional district as it

existed on June 1, 1965. In no other instance are legislators elected from districts with other boundaries than county lines. It is asserted that this is an illegal discrimination. It has not been made to appear that these districts were set up for the purpose of lessening or enhancing the weight of the votes of the citizens residing in these districts, or that it was designed to or did affect the voting strength of any racial or political group. This being so, it cannot be said that the Federally protected right of equality of voting strength has been violated. If there has been any resulting injustice it is a political one for which a political remedy should be sought.

We are now brought to the problem as to whether the allocation of senators and representatives among the citizens of the State is so disproportionate as to amount to the invidious discrimination which has been condemned as violative of the Equal Protection Clause. Efforts have been made by some of the amici curiae to defend the legislative enactment, and to persuade us that the statutory departures from the equal population principle are within permissible limits. The Attorney General of Florida, with commendable candor, concedes that the standard has not been met, but urges that we should once more afford the State of Florida, acting through its legislature, an opportunity to put its legislative house in order. If this can be done we think it should be done. In attempting to solve problems of the legislative apportionment factors other than one person-one vote may loom large. Adjacent counties, neither of which has a population sufficient to have a senator or representative by itself, may be so wholly different in economic character that it would be inadvisible to unite them for the purpose of legislative representation. We can recognize that such problems can

and do exist but we have no claim to the competence required to solve them. It is the belief of the Court that the Florida legislature, as it will be constituted under the statute with the Section 1(3) senators eliminated, will have a majority such as will permit, if there be the will to do so, a correction of the malapportionment which exists under the Act. In accepting the legislative enactment as an interim measure, the Court does not overlook the prior indulgence which had been granted but we are reminded that our prior order was entered before the guidelines of Reynolds v. Sims, supra, and other decisions of the Supreme Court had been drawn. In affording a further opportunity to the Florida legislature to adopt a constitutionally acceptable apportionment, we have the confident hope that there will be a recognition, by the legislative bodies, of the paramount necessity of conforming to the constitutional requirement that "both houses of a state legislature must be apportioned on a population basis," and that the "state make an honest and good faith effort to construct districts in both houses of its legislature, as nearly of equal population as is practicable." Reynolds v. Sims, 377 U.S. 533, 577, 84 S.Ct. 1362, 12 L. Ed. 2d 506. Precise exactness cannot, of course, be achieved but only such minimal departures as necessity demands will be permitted. Variations are to be sanctioned only when they cannot be avoided. We do not think it can be assumed that the fifteen percent variance allowed in Tombs v. Fortson, N.D. Ga. 1965, 241 F. Supp. 65, establishes a rule of tolerance that will be followed as a legal principle. If the Florida legislature does not adopt a valid plan of apportionment then this Court must do so; and so that it may, if need be, do so, jurisdiction will be retained. No further action will be taken by the Court until the adjournment of the next regular session of the

legislature or, in the event it shall not have enacted reapportionment legislation, until the lapse of the time required to convene and hold a legislative special session for reapportionment.

ORDER

The premises considered, it is ORDERED, ADJUDGED and DECREED that:

1. The plan of apportionment of the Florida legislature, as made by HB 19-XX enacted at its special session in 1965, in both the Senate and House of Representatives does not meet the requirements of the Equal Protection Clause of the Federal Constitution as construed and applied in Reynolds v. Sims, supra, and other decisions of the Supreme Court. The apportionment made by said statute, as herein modified, is approved as an interim plan for a period ending sixty days after the adjournment of the 1967 regular session of the Florida legislature;

2. The provisions of Section 1(3) of said statute are in violation of the Equal Protection Clause of the Federal Constitution. The statute, and the plan of apportionment thereby enacted, are modified by deleting and striking therefrom the aforesaid Section 1(3); and

3. The Court retains jurisdiction of this cause until such time as there shall be an adjudication that a valid plan of legislative apportionment has been enacted, or until such a plan has been made effective by a decree of this Court.

DONE, ORDERED and DECREED this 23rd day of December, 1965.

Warren L. Jones
United States Circuit Judge

William A. McRae, Jr.
United States District Judge

David W. Dyer
United States District Judge

APPENDIX A-2

SUPREME COURT OF THE UNITED STATES

SWANN v. ADAMS, et al.

Appeal from the United States District Court for the Southern District of Florida.

No. 297. Decided June 22, 1964.

PER CURIAM.

The judgment below is reversed. *Reynolds v. Sims*, __ U.S. __. The case is remanded for further proceedings consistent with the views stated in our opinions in *Reynolds v. Sims* and in the other cases relating to state legislative apportionment decided along with *Reynolds*.

Mr. Justice Clark would reverse on the grounds stated in his opinion in *Reynolds v. Sims*, __ U.S. __.

Mr. Justice Stewart would remand for further proceedings consistent with the views expressed in his dissenting opinion in *Lucas v. Colorado General Assembly* and *WMCA, Inc., v. Lomenzo*, __ U.S. __.

Mr. Justice Harlan dissents for the reasons stated in his dissenting opinion in *Reynolds v. Sims*, __ U.S. __.

APPENDIX B-1

CHAPT. 65-2440
(House Bill No. 19-XX)

A bill to be entitled

An act to provide for the apportionment of the membership of the senate and the house of representatives of the legislature of the state of Florida; providing for subdistricting; repealing sections 10.01, 10.02, 10.03 and 10.04, Florida Statutes; prescribing terms of office of members of both houses; providing for continuance in office by members until the general election in November, 1966; providing for continuance in office of certain senators until 1968; providing for elections; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. (1) The representation of the people of the state in the senate of the state shall continue as now constituted until the general election to be held in November, 1966. Thereafter, the representation of the senate of the state shall be as set forth in this section.

(2) The representation in the senate of the Florida legislature shall consist of fifty-eight (58) members, each representing a district, which districts are created and numbered as follows:

First district — Escambia and Santa Rosa counties, provided, however, the senator serving from the present

first district shall be the senator from the first district until the general election of 1968.

Second district — Escambia and Santa Rosa counties.

Third district — Okaloosa and Walton counties, provided, however, that the senator serving from the present thirty-ninth district shall be the senator from the third district until the general election of 1968.

Fourth district — Jackson, Calhoun, Washington and Holmes counties.

Fifth district — Gulf, Liberty, Wakulla, Gadsden and Franklin counties.

Sixth district — Polk county.

Seventh district — Polk county, provided, however, that the senator serving from the present seventh district shall be the senator from the seventh district until the general election of 1968.

Eighth district — Leon county.

Ninth district — Hernando, Sumter, Citrus and Pasco counties.

Tenth district — Jefferson, Madison, Taylor, Hamilton, Columbia, Suwannee, and Lafayette counties.

Eleventh district — Pinellas county, provided, however, that the senator serving from the present eleventh

district shall be the senator from the eleventh district until the general election of 1968.

Twelfth district — That portion of Dade county comprising the third congressional district as it existed on June 1, 1965.

Thirteenth district — Dade and Monroe counties, provided, however, that the senator serving from the present thirteenth district shall be the Senator from the thirteenth district until the general election 1968.

Fourteenth district — Pinellas county.

Fifteenth district — Baker, Bradford, Clay, Union, Putnam and Flagler counties.

Sixteenth district — Duval, Nassau, and St. Johns counties.

Seventeenth district — St. Lucie, Indian River and Martin counties.

Eighteenth district — Duval, Nassau, and St. Johns counties.

Nineteenth district — Orange and Seminole counties, provided, however, that the senator serving from the present nineteenth district shall be the senator from the nineteenth district until the general election of 1968.

Twentieth district — Orange and Seminole counties.

Twenty-first district — Duval, Nassau, and St. Johns counties.

Twenty-second district — Sarasota county.

Twenty-third district — Lake and Osceola counties, provided, however, that the senator serving from the present twenty-third district shall be the senator from the twenty-third district until the general election of 1968.

Twenty-fourth district — Lee, Hendry, and Collier counties.

Twenty-fifth district — Bay county, provided, however, that the senator serving from the present twenty-fifth district shall be the senator from the twenty-fifth district until the general election of 1968.

Twenty-sixth district — Pinellas county.

Twenty-seventh district — Marion, Dixie, Levy and Gilchrist counties.

Twenty-eighth district — Volusia and Brevard counties.

Twenty-ninth district — Hardee, DeSoto, Okeechobee, Glades, Charlote, and Highlands counties.

Thirtieth district — Broward county.

Thirty-first district — Duval, Nassau, and St. Johns counties, provided, however, that the senator serving from

the present thirty-first district shall be the senator from the thirty-first district until the general election of 1968.

Thirty-second district — Alachua county.

Thirty-third district — Duval, Nassau, and St. Johns counties.

Thirty-fourth district — Hillsborough county.

Thirty-fifth district — Palm Beach county, provided, however, that the senator serving from the present thirty-fifth district shall be the senator from the thirty-fifth district until the general election of 1968.

Thirty-sixth district — Manatee county.

Thirty-seventh district — Volusia and Brevard counties, provided, however, that the senator serving from the present thirty-seventh district shall be the senator from the thirty-seventh district until the general election of 1968.

Thirty-eighth district — Volusia and Brevard counties.

Thirty-ninth district — That portion of Dade county comprising the third congressional district as it existed on June 1, 1965.

Fortieth district — That portion of Dade and Monroe counties comprising the fourth congressional district as it existed on June 1, 1965.

Forty-first district — That portion of Dade and Monroe counties comprising the fourth congressional district as it existed on June 1, 1965, provided, however, that the senator serving from the present forty-first district shall be the senator from the forty-first district until the general election of 1968.

Forty-second district — Orange and Seminole counties.

Forty-third district — Dade and Monroe counties, provided, however, that the senator serving from the present forty-third district shall be the senator from the forty-third district until the general election of 1968.

Forty-fourth district — Dade and Monroe counties.

Forty-fifth district — Orange and Seminole counties.

Forty-sixth district — Dade and Monroe counties.

Forty-seventh district — Pinellas county.

Forty-eighth district — Dade and Monroe counties.

Forty-ninth district — Palm Beach county.

Fiftieth district — Palm Beach county.

Fifty-first district — Broward county.

Fifty-second district — Dade and Monroe counties.

Fifty-third district — Broward county.

Fifty-fourth district — Broward county.

Fifty-fifth district — Hillsborough county.

Fifty-sixth district — Hillsborough county.

Fifty-seventh district — Hillsborough county.

Fifty-eighth district — Duval, Nassau, and St. Johns counties.

(3) If by this reapportionment the district of a member of the senate, as now constituted, who is not otherwise assigned a district hereinabove and whose term of office expires with the general election of November, 1968, shall be altered, abolished or the number of his district relocated outside of his present district, then such member shall continue as a senator for the county of his residence during the remainder of his term and shall have an equal vote with any other senator and the number of his senatorial district shall be indicated by adding the letter "X" after the number of the district to which he was elected, even though it increases the maximum number of members herein provided for.

(4) The even numbered senatorial districts shall be filled in the general election of November, 1966, and shall be for four-year terms. The odd numbered senatorial districts, except as to any district for which specific provision has been made herein for representation by a present senator for that district until the general election of 1968, shall be filled in the general election of November, 1966, initially for a two-year term. Thereafter, all odd num-

bered senatorial districts shall be filled for four-year terms.

(5) Where the same two or more counties or portions thereof are assigned more than one (1) senatorial district, no two (2) senators each representing any district comprised of said counties shall reside in the same county until each county in said district has a senator residing in said county who is a qualified elector of that county. The secretary of state shall establish for the necessary number of districts such residential qualifications for candidates as shall be required to accomplish the purposes of this subsection.

(6) Any senator elected in 1964 and designated herein by a district bearing the letter "X" may run in 1966 for a new two (2) or four (4) year senatorial office if there is a vacancy in the district of his residence, provided that prior to qualifying for the new two (2) or four (4) year term he resigns from the office to which he was elected in 1964.

Section 2. The house of representatives of the Florida legislature shall consist of one hundred nine (109) members apportioned among the counties according to the latest federal decennial census of population. Until reapportioned according to the census of 1970 the representation in the house of representatives shall be apportioned as follows:

County or Counties	*Number of Members*
Dade	18
Duval	9
Hillsborough	9

Pinellas	8
Broward	7
Orange	5
Palm Beach	5
Polk	4
Escambia	3
Volusia	3
Brevard	3
Sarasota	1
Leon	1
Alachua	1
Manatee	1
Bay	1
Okaloosa	2
Lake	1
Seminole	1
Lee	1
Marion	1
Monroe	1
Gadsden	1
St. Lucie	1
Pasco	1
Jackson	1
Osceola	1
Santa Rosa	1
Putnam	1
Indian River	1
Walton, Holmes, Washington	1
Gulf, Calhoun, Liberty	1
Franklin, Wakulla, Jefferson	1
Taylor, Madison	1
Lafayette, Suwannee, Hamilton	1
Columbia, Union	1
Baker, Nassau	1

Bradford, Clay	1
St. Johns, Flagler	1
Dixie, Levy, Citrus, Gilchrist	1
Hernando, Sumter	1
DeSoto, Hardee	1
Okeechobee, Martin	1
Hendry, Collier, Glades	1
Highlands, Charlotte	1

Section 3. Senators and members of the house of representatives shall reside in and be elected at large by the voters in the respective counties or districts for which they were chosen; provided, however, that when any county has more than ten (10) representatives, it shall be divided into districts by an act of this legislature, the number of such districts to be the number of representatives in excess of ten (10) and the representatives in excess of ten (10) to be a qualified elector of and reside in and be elected by the qualified electors in their respective districts.

Section 4. All senators, except as to those to be elected to new initial two (2) year terms as provided for in section one (1) herein, and except when vacancies are to be filled, are to be elected for four (4) years. Members of the house of representatives are to be elected for two (2) years.

Section 5. The provisions of this act are severable and if any word, sentence, paragraph, subsections or sections of the act shall for any reason be held void or unconstitutional by any court of competent jurisdiction, the decision of said court shall not affect or impair the validity of any of the remaining words, sentences, paragraphs, subsections or sections of this act.

Section 6. Candidates for offices created herein shall be nominated in 1966 in the manner provided by law and the offices shall be filled at the general election November, 1966. For all other purposes, this act shall take effect at the close of the polls at the general election in 1966 and sections 10.01, 10.02, 10.03 and 10.04, Florida Statutes, shall thereupon stand repealed.

APPENDIX B-2

CHAPT. 65-2446
(House Bill No. 35-XX)

A bill to be entitled

An act relating to legislative districts when required by law; providing for the composition of districts in Dade County; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Whenever by law the county of Dade shall be required to be divided into eight (8) districts for the purposes of the residence of, and the election of, an equal number of members of the house of representatives, the said eight (8) districts shall be as follows:

The First District shall consist of the following 39 Dade County Precincts: 2, 3, 4, 10 through 22, 24 through 30, 211, 212, 240 through 245, 248 through 251, 253 through 255, and 315.

The Second District shall consist of the following 37 Dade County Precincts: 23, 41 through 48, 68 through 72, 213 through 219, 221, 239, 246, 247, 256 through 258, 268 through 270, 282, and 5 through 9.

The Third District shall consist of the following 46 Dade County Precincts: 32 through 40, 49 through 57, 62 through 67, 73 through 79, 259 through 264, 266, 267, 271, 272, 277 through 281.

The Fourth District shall consist of the following 39 Dade County Precincts: 83 through 106, 118 through 120, 126 through 131, 222, 223, 283 through 286.

The Fifth District shall consist of the following 38 Dade County Precincts: 1, 31, 58 through 61, 80 through 82, 107 through 117, 121, 144 through 146, 148, 220, 224, 252, 265, 273 through 276, 287 and 288 through 291.

The Sixth District shall consist of the following 44 Dade County Precincts: 122 through 125, 132 through 143, 147, 149 through 160, 177 through 184, 225, 292 through 295, 308, and 309.

The Seventh District shall consist of the following 40 Dade County Precincts: 161 through 176, 185 through 191, 196 through 198, 226 through 228, 296 through 299, 304 through 307, 310, 313 and 314.

The Eighth District shall consist of the following 43 Dade County Precincts: 192 through 195, 199 through 210, 229 through 237, 300 through 303, 311, 312, 316 through 326, and 238.

Section 2. As used in this act, for the purpose only of describing a representative district, the term "precinct" means those precincts existing and on file in the office of the secretary of state as of June 1, 1965.

Section 3. This act shall take effect upon becoming a law.

Became a law without the Governor's approval.
Filed in Office Secretary of State, July 9, 1965.

APPENDIX C-1

SENATE BILL No. 10-X (63)

A bill to be entitled

An act providing for the apportionment of the membership of the Legislature of the state of Florida; amending sections 10.01, 10.03 and adding section 10.04, Florida Statutes; providing for an election; providing for filling vacancies; providing effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF FLORIDA:

Section 1. Section 10.01, Florida Statutes, is amended to read:

10.01 *Division of state into senatorial districts; apportionment of senate, etc.* —

(1) The representation in the senate of the Florida legislature shall consist of forty-three (43) members, each representing a district. The counties of the state shall be apportioned into forty-two (42) senatorial districts and one district shall be added by superimposing over district thirteen (13) district forty-three (43) representing Dade County. The forty-three (43) districts shall be apportioned among the several counties of the state to provide equitable representation based upon similar economic interests, geographic area and population. If by this reapportionment the district of a member of the senate whose term of office expires with the general election of Novem-

ber 1964 shall be abolished, or the number of his district relocated outside of his present district, then such member shall continue as a senator for the county of his residence during the remainder of his term and shall have an equal vote with any other senator and the number of his senatorial district shall be indicated by adding the letter X after the number of the district to which he was elected even though it increases the maximum number of members herein provided for; no county except Dade shall be divided in creating a senatorial district. Every district shall consist of contiguous counties.

(2) Pursuant to this act forty-three (43) senatorial districts shall be constitute das follows:

First district — Santa Rosa county

Second district — Escambia county

Third district — Walton county, Holmes county and Washington county

Fourth district — Jackson county and Calhoun county

Fifth district — Wakulla county, Liberty county, Gulf county and Franklin county

Sixty district — Gadsden county

Seventh district — Polk county

Eighth district — Leon county

Ninth district — Hernando county, Sumter county and Citrus county

Tenth district — Taylor county, Madison county and Jefferson county

Eleventh district — Pinellas county

Twelfth district — St. Lucie county

Thirteenth district — Dade county

Fourteenth district — Columbia county

Fifteenth district — Bradford county, Clay county and Union county

Sixteenth district — Nassau county and Baker county

Seventeenth district — Hamilton county, Suwannee county and Lafayette county

Eighteenth district — Duval county

Nineteenth district — Orange county

Twentieth district — Marion county

Twenty-first district — Dixie county, Levy county and Gilchrist county

Twenty-second district — Sarasota county

Twenty-third district — Lake county

Twenty-fourth district — Lee county, Hendry county and Collier county

Twenty-fifth district — Bay county

Twenty-sixth district — Putnam county

Twenty-seventh district — Hardee county, Desoto county and Glades county

Twenty-eighth district — Volusia county

Twenty-ninth district — Indian River county

Thirtieth district — Broward county

Thirty-first district — St. Johns county and Flagler county

Thirty-second district — Alachua county

Thirty-third district — Osceola county, Okeechobee county and Martin county

Thirty-fourth district — Hillsborough county

Thirty-fifth district — Palm Beach county

Thirty-sixth district — Manatee county

Thirty-seventh district — Brevard county

Thirty-eighth district — Pasco county

Thirty-ninth district — Okaloosa county

Fortieth district — Charlotte county and Highlands county

Forty-first district — Monroe county

Forty-second district — Seminole county

Forty-third district — Dade

Section 2. Section 10.03, Florida Statutes, is amended to read:

10.03 *Representation in the House of Representatives.* —

(1) Representation in the house of representatives shall consist of one hundred twelve (112) representatives which shall be apportioned among the counties by the method of equal proportions; that is, each county shall have one representative and the remaining representatives shall be assigned to the counties in proportion to population.

(2) Pursuant to subsection (1) of this section, there shall be one hundred twelve (112) members of the house of representatives apportioned among the several counties as follows:

County	*Number of Representatives*
Dade	14
Duval	7

Hillsborough	
Pinellas	
Broward	
Orange	
Palm Beach	
Polk	
Escambia	
Volusia	
Brevard	
Sarasota	
Leon	
Alachua	
Manatee	
Bay	
Okaloosa	
Lake	
Seminole	
Lee	
Marion	
Monroe	
Gadsden	
St. Lucie	
Pasco	
Jackson	
Putnam	
St. Johns	
Santa Rosa	
Indian River	
Highlands	
Columbia	
Clay	
Osceola	
Nassau	
Martin	

Collier	1
Walton	1
Suwannee	1
Madison	1
Taylor	1
Charlotte	1
Bradford	1
Hardee	1
Sumter	1
DeSoto	1
Washington	1
Hernando	1
Holmes	1
Levy	1
Gulf	1
Jefferson	1
Citrus	1
Hendry	1
Hamilton	1
Calhoun	1
Baker	1
Franklin	1
Okeechobee	1
Union	1
Wakulla	1
Flagler	1
Dixie	1
Liberty	1
Glades	1
Lafayette	1
Gilchrist	1

Section 3. Section 10.04, Florida Statutes, is added to read:

10.04 *Legislative apportionment.* —

(1) The 1963 legislature shall be composed of the legislators elected pursuant to the constitution of 1885, as amended, and of the additional legislators as provided for in sections 10.01 and 10.03, Florida Statutes, as amended at this special session of the legislature. Any representative or senator elected in the 1962 general election pursuant to the constitution of 1885, as amended, shall serve in said office for the term for which he was elected. The terms of office of members of the senate shall be for four (4) years and the terms of office of members of the house of representatives shall be for two (2) years. Any senator now serving shall complete his term to which he was elected; provided that the resignation or death of any legislator elected at or prior to the 1962 general election shall create a vacancy. The additional legislative offices herein created shall be filled by and at a special election to be held in the affected counties or districts, as provided by law; provided, however, the registration books for the elections provided herein shall close at 5 p. m. on the fifteenth day before the first primary election and remain closed for the remaining second primary and general election. The senators elected from the new even-numbered districts shall be elected for a term ending with the general election of 1966 and the senators elected from the new odd-numbered districts shall be elected for a term ending with the general election of 1964; thereafter all senators shall be elected for four (4) year terms.

(2) The legislature shall hereafter reapportion its representation in the state senate at such times as may be required by the constitution of Florida.

Section 4. It is declared to be the legislative intent that, if any section, subsection, sentence, clause or provision of this act is held invalid, the remainder of the act shall not be affected.

Section 5. This act shall take effect immediately upon becoming a law.

APPENDIX C-2

HOUSE JOINT RESOLUTION NO. 5-X (63)

A Joint Resolution proposing an amendment of Article VII of the Constitution of the State of Florida; providing for apportionment of the Florida Legislature; providing for submission to the electors.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF FLORIDA:

That the following amendment of Article VII of the Constitution of Florida is agreed to and shall be submitted to the electors of this state for ratification or rejection, at the general election of 1964.

ARTICLE VII

APPORTIONMENT AND CENSUS

Section 1. *Composition of the legislature.*— The legislature of the State of Florida shall consist of a senate and a house of representatives. Members of the senate shall be elected for a term of four (4) years and members of the house shall be elected for a term of two (2) years. The term of members of the legislature shall expire on the first Tuesday after the first Monday in November in each regular election year. Members of the senate and house of representatives shall be elected as provided by law. Any new county that may be created shall be entitled to one (1) member in the house of representatives in excess of any limit prescribed in the following sections of this article

until the next reapportionment and the county shall be assigned when created to a senatorial district as determined by the legislature.

Section 2. *Senate apportionment.* — The legislature shall divide the state into forty-two (42) senatorial districts with only one (1) senator elected in each district; except there shall be two (2) senators elected from the most populous county, the additional senator being assigned the number forty-three (43). The forty-two (42) districts shall be apportioned among the several counties of the state so as to provide equitable representation based upon similar economic interests, geographic area and population. Every district shall consist of contiguous counties, and no county may be divided in creating a senatorial district except Dade County.

Section 3. *Representation in the House of Representatives.* — Representation in the house of representatives shall consist of one hundred twelve (112) representatives which shall be apportioned among the counties by the method of equal proportions; that is, each county shall have one representative and the remaining representatives shall be assigned to the counties in proportion to population. The populations of the respective counties for the purposes of this section shall be confined to citizens of the United States and shall not include foreign born persons who have not become naturalized.

Section 4. The legislature shall reapportion the representation of the house and senate at the 1971 regular session of the legislature and every ten (10) years thereafter based upon the preceding latest federal decennial census.

Section 5. If any part of this joint resolution is declared unconstitutional or null and void then the entire resolution shall be null, void and inoperative.

Office-Supreme Court, U.S.
FILED
FEB 14 1966
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

NO. 973

RICHARD H. M. SWANN,
and
SUPERVISOR OF ELECTIONS
of Dade County, Florida
Appellants,

vs.

TOM ADAMS, Secretary of State of the State of Florida; E. L. GATES, Supervisor of Registration of Broward County, Florida; and W. B. FREEMAN, Supervisor of Registration of Monroe County, Florida,
Appellees.

On Appeal From the United States District Court
In and For the Southern District of Florida

STATEMENT OF APPELLEES OPPOSING JURISDICTION AND MOTION TO AFFIRM

EARL FAIRCLOTH
Attorney General

EDWARD D. COWART
Assistant Attorney General

SAM SPECTOR
Assistant Attorney General
The Capitol
Tallahassee, Florida

Counsel for Appellees.

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IN THE

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RICHARD H. M. SWANN,
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Appellees.

On Appeal From the United States District Court
In and For the Southern District of Florida

STATEMENT OF APPELLEES OPPOSING JURISDICTION AND MOTION TO AFFIRM

PRELIMINARY STATEMENT

On January 29, 1966, the Appellants forwarded to this Court their jurisdictional statement supplementing their appeal from an order of the United States District Court for the Southern District of Florida, which order approved as an interim plan, the reapportionment statute enacted by the Florida Legislature, as modified by the Court. The Appellees, believing that the matters set forth herein will demonstrate the lack of substance in the questions sought to be presented by such appeal, file this Statement in Opposition to Appellants Jurisdictional Statement and include their Motion to Affirm the Judgment of the Court below, upon the ground that the question on which the decision of this cause depends is so unsubstantial as to obviate further argument.

PRIOR PROCEEDINGS

Pursuant to a mandate of the United States District Court for the Southern District of Florida on January 8, 1965, ordering the Florida Legislature to validly reapportion itself by July 1, 1965, in accordance with the standards of one man—one vote, and the enactment by the Florida Legislature of a reapportionment act, the Court below considered argument, briefs by the parties to this appeal and issued the order from which this appeal

is taken on December 23, 1965. The order of the District Court of January 8, 1965, and the opinion of the District Court on December 23, 1965, are set out in Appendix A and Appendix B respectively of this Statement.

STATEMENT OF FACTS

House Bill 19-XX of the Florida Legislature was duly enacted on June 30, 1965, in a conscientious effort to comply with the Court's mandate embodied in its order of January 8, 1965. Section 1(3) of this Act was stricken by the Court below in its order of December 23, 1965, and the Act in its modified form is set forth in Appendix "C." Appended to the Court modified act are exhibits of population variance and a statistical statement reflecting the overall result that 50.43% of the people in the State of Florida are enabled by the plan to elect 46.79% of the members of the House. Moreover, these statistics further reflect that 48.28% of the members of the Senate are elected by 52.35% of the population.

STATUTES INVOLVED

Under attack in this proceeding is House Bill 19-XX, Chapter 65-2440, Laws of Florida, (Appendix C) and House Bill 35-XX, Chapter 65-2446, Laws of Florida, (Appendix D).

QUESTION PRESENTED

Does the approval by the United States District Court of a legislative apportionment act, as modified by said

court, on an interim basis, constitute an abuse of discretion vested in said court?

ARGUMENT

DOES THE APPROVAL BY THE UNITED STATES DISTRICT COURT OF A LEGISLATIVE APPORTIONMENT ACT, AS MODIFIED BY SAID COURT, ON AN INTERIM BASIS, CONSTITUTE AN ABUSE OF DISCRETION VESTED IN SAID COURT?

In considering the questions as enumerated in the Appellant's Jurisdictional Statement, the Appellees contend that the substantive question involved in this review is more accurately stated in a question propounded in abuse of discretion. The Court in its opinion, which opinion is attached as Appendix "B", found the constitutional deficiency to be solely in the allocation of senators and representatives, among the citizens of the state. The Appellee urges that the principle to which we must adhere is that both houses of bicameral legislature must be apportioned on the basis of population as the main and overriding factor, while the guidelines are not definite as to detail. The Supreme Court of the United States has indicated a population-variance ratio of more than 2 to 1 would not meet the standard, *Reynolds v. Sims*, 377 U.S. 533; 12 L. ed 2d 506; 84 S.Ct. 1362, (and other companion cases); that a population of 1.17 to 1 might be arguable, *Lucas v. Colorado General Assembly*, 377 U.S. 713, 12 L. ed 2d 632, 84 S. Ct. 1472; and a United States

District trial court has said that a population variance greater than 15% from the mean or average district would not be acceptable, *Henry J. Toombs et al v. Ben W. Fortson, Jr.*, et al, 241 F. Supp 65, 1965. The Appellees do not contend that House Bill 19-XX meets these standards. It is urged, however, that the Senate does meet the standard inferentially approved in *Lucas*, supra. On the other hand, it appears that neither plan meets the standard announced in *Toombs v. Fortson*, supra.

The Appellees set forth this position clearly to the United States District Court below and that court considered, in view of the statements referred above, solutions to this problem. The Court stated:

> ". . . In attempting to solve problems of the legislative apportionment factors other than one person—one vote may loom large. Adjacent counties, neither of which has a population sufficient to have a senator or representative by itself, may be so wholly different in economic character that it would be inadvisable to unite them for the purpose of legislative representation. We can recognize that such problems can and do exist *but we have no claim to the competence required to solve them.* It is the belief of the Court that the Florida Legislature, as it will be constituted under the statute with the Section 1(3) senators eliminated, will have a majority such as will permit, if there be the will to do so, a correction of the malapportionment which exists under the act." (Emphasis ours)

The Appellees submit that this Court had in many instances in the long and protracted litigation in this cause indicated its reluctance to reapportion the state by judicial fiat and has always indicated its desire and even urged that the legislature itself, being the voice of the people of the State of Florida, effectuate valid reapportionment. The court clearly realized that a major break-through had been made in the bill under attack here. The balance of power had been shifted from the least populous counties to the most populous counties. The statistical compilation in Appendix C-1 and C-2 indicate beyond question the balance of power shift, which will enable the newly elected legislature to fully comply with the Court's one man—one vote mandate.

The support of the approval of House Bill 19-XX and 35-XX on an interim basis is not a new position in reapportionment cases, where vast advances are recognized notwithstanding that a reapportionment plan has fallen short of constitutional requirements, see *Toombs v. Fortson*, supra, wherein the Court stated:

> "We deem the duty of the court in a case such as this to rest on two considerations. First, the constitutional rights of plaintiffs must be accorded, and, if possible, by the state and not the court. Second, this should be accomplished within the ambit of the public interest that is involved in allowing the state political and governmental process to function

in a manner so as to do as little harm as possible to other areas and functions for which the state is responsible.

Substantial progress toward the goal of fair representation has been made. True, there is a ways to go and it is to be hoped that the reapportioned General Assembly will now finish the job. In any event we have determined to accept the proposed House plan of apportionment and the current Senate plan of apportionment as interim plans to be used on stated conditions and until proper apportionment becomes a fact. We are persuaded to this course by the view that the General Assembly of Georgia has been inordinately involved in apportionment since the fall of 1962, and for that reason have concluded to withhold further action in the case until the end of the 1967-68 regular session of the General Assembly, or May 1, 1968, whichever may be the earlier."

CONCLUSION

After extensive consideration of the constitutional deficiencies alleged by the Appellants here, plaintiffs below, to be present in the challenge of reapportionment statutes, the District Court declared:

"1. The plan of apportionment of the Florida legislature, as made by HB 19-XX enacted at its special session in 1965, in both the Senate and House of Representatives does not meet the requirements of the Equal

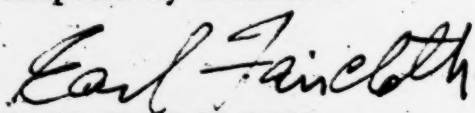
Protection Clause of the Federal Constitution as construed and applied in Reynolds v. Sims, supra, and other decisions of the Supreme Court. The apportionment made by said statute, as herein modified, is approved as an interim plan for a period ending sixty days after the adjournment of the 1967 regular session of the Florida legislature;

2. The provisions of Section 1(3) of said statute are in violation of the Equal Protection Clause of the Federal Constitution. The statute, and the plan of apportionment thereby enacted, are modified by deleting and striking therefrom the aforesaid Section 1(3); and

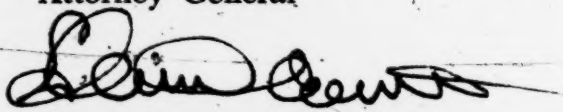
3. The Court retains jurisdiction of this cause until such time as there shall be an adjudication that a valid plan of legislative apportionment has been enacted, or until such a plan has been made effective by a decree of this Court."

The Appellees respectfully urge this court that there is not demonstrated in this appeal any abuse of discretion committed by the lower court, a trial court fully informed of all issues involved in this proceeding.

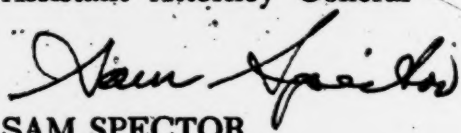
Respectively submitted



EARL FAIRCLOTH
Attorney General



EDWARD D. COWART
Assistant Attorney General



SAM SPECTOR
Assistant Attorney General
The Capitol
Tallahassee, Florida

Counsel for Appellees.

APPENDICES

Appendix A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PETER B. SOBEL, on behalf of himself, and others similarly situated,
Plaintiffs,

v. No. 182-62-M-CIVIL

TOM ADAMS, Secretary of State of the State of Florida,
Defendant.

RICHARD H. M. SWANN,
Plaintiff,

v. No. 186-62-M-CIVIL

TOM ADAMS, Secretary of State of the State of Florida, et al,
Defendants.

ORDER

Upon consideration, it is
ORDERED:

1. Petition to Intervene of Herman W. Goldner is hereby denied.

2. Petition for Order on Mandate of Lee Weissenborn is hereby denied.

3. Petition of League of Women Voters of Florida to file Brief Amicus Curiae is hereby granted.

4. Petition of the Government Research Council of the Miami-Dade County Chamber of Commerce for Leave to File Brief Amicus Curiae is hereby granted.

5. The Court finds that Peter B. Sobel has no further standing in the consolidated cases. Petition of said Peter Sobel to declare the statutes and proposed constitutional amendment providing for 43 senators and 112 house members unconstitutional and for further relief in accordance with the United States Supreme Court decision is hereby denied.

6. Action is hereby deferred until further order of the Court upon all pending or undisposed of prayers in Petition of Richard H. M. Swann filed on July 20, 1964, and further Petition of said Richard H. M. Swann filed on November 12, 1964, for Order on Mandate and Motion for Hearing.

7. Action is hereby deferred on Petition filed on December 29, 1964, by Claude Brown, Supervisor of Registration of Dade County, Florida, for hearing and order in accordance with decision of the Supreme Court of the United States.

8. The matters specified in paragraphs numbered 6 and 7, above, upon which action is presently deferred,

will be promptly reconsidered by this Court if the Legislature of Florida has not validly reapportioned itself by July 1, 1965, in accordance with the standards as laid down by the Supreme Court of the United States.

DONE AND ORDERED at Miami, Florida, this 8th day of January, 1965.

s/ WARREN L. JONES
Warren L. Jones
United States Circuit Judge

s/ WM. A. McRae, Jr.
Wm. A. McRae, Jr.
United States District Judge

I concur in paragraphs 1 through 5 and I respectfully dissent as to paragraphs 6, 7 and 8 of the foregoing Order.

s/ DAVID W. DYER
David W. Dyer
United States District Judge

Appendix B

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA, MIAMI DIVISION

RICHARD H. M. SWANN,)
Plaintiff,)
v.) No. 186-62-M-CIVIL-DD
TOM ADAMS, Secretary)
of State of the State)
of Florida, et al.,)
Defendants.)

Before JONES, Circuit Judge, and McRAE and DYER, District Judges

PER CURIAM:

Before this Court for determination is the question of the constitutional validity of a statute of Florida enacted at a 1965 Special Session of its Legislature, designated as HB 19-XX, providing for the apportionment of the membership of the Florida State Senate and House of Representatives. A copy of the statute is annexed as an appendix. The statutory apportionment as made by HB 19-XX has been subjected to several grounds of attack. It is urged that the provisions of Section 1(3) are invalid. This Section continues in office those senators, whose districts have been abolished, for the remainder of the term to which they were elected, which would be until

the general election of November, 1968. It is contended that the provisions of Section 1(5) of the Act cannot be upheld. This Section requires that where two or more counties are assigned more than one senatorial district, no two senators representing any district comprised of such counties shall reside in the same county until each county has a senator residing and qualified to vote therein. It is said that the subdistricting of Dade County but not other counties is an unwarranted discrimination. The most serious of the questions presented are those which deal with the one man-one vote, equality of representation principle. Other issues are raised but are, in the Court's opinion, without merit and without sufficient plausibility to require discussion.

It seems apparent that the carrying forward into a newly constituted legislature those senators, previously elected, who no longer have a constituency cannot be upheld. To permit these senators to serve who will no longer be representing any electors would result in giving an added weight to the votes of the electors of those areas from which they were originally chosen. To eliminate this inequality the Act (HB 19-XX) must be modified by the deletion of Section 1(3).

It is not shown that Section 1(5) is unconstitutional. The effect of this Section is to prevent the election of two or more senators from any county until a senator has been elected from each county where two or more counties are combined in two or more senatorial districts. By way of example, Duval County, with a 1960 population of 455,411, is combined with Nassau County, with a popu-

lation of 17,189, and St. Johns County, with a population of 30,034, in senatorial districts numbered 16, 18, 21, 31, 33 and 58. Thus it is provided that Nassau, with about three percent of the population of the districts and St. John's with about six percent of the population of the districts, will each have one-sixth of the senatorial representation from the multi-county districts. The provision relates to residence of the senators and not to the voting strength of those who elect them. Although each county of the multi-county districts is entitled to have a senator resident within it, the tenure of such senators depends upon the district-wide electorate. Such senator represents, not the county where he resides, but the district. The weight of the voter in the most populous of the multi-county districts (Duval County in the stated example) for senators to represent him is approximately equal in weight to voters in the less populous counties. This question is the same as was decided in Fortson v. Dorsey, 379 U.S. 433, 85 S.Ct. 498, 13 L.Ed. 2d 401, where several districts were within a county. It has not been suggested that the residence requirement in the Florida statute was intended to minimize or cancel out the voting strength of racial or political elements of the voting population, or that it would have such effect. Cf. Fortson v. Dorsey, supra.

Dade and Monroe Counties comprise six senatorial districts under the statute. Two districts, numbered 12 and 39, are composed of that part of Dade County comprising the third congressional district as it existed on June 1, 1965. Two other districts, numbered 40 and 41, are made up of that portion of Dade and Monroe Counties comprising the fourth congressional district as it existed on

June 1, 1965. In no other instance are legislators elected from districts with other boundaries than county lines. It is asserted that this is an illegal discrimination. It has not been made to appear that these districts were set up for the purpose of lessening or enhancing the weight of the votes of the citizens residing in these districts, or that it was designed to or did affect the voting strength of any racial or political group. This being so, it cannot be said that the Federally protected right of equality of voting strength has been violated. If there has been any resulting injustice it is a political one for which a political remedy should be sought.

We are now brought to the problem as to whether the allocation of senators and representatives among the citizens of the State is so disproportionate as to amount to the invidious discrimination which has been condemned as violative of the Equal Protection Clause. Efforts have been made by some of the amici curiae to defend the legislative enactment, and to persuade us that the statutory departures from the equal population principal are within permissible limits. The Attorney General of Florida, with commendable candor, concedes that the standard has not been met, but urges that we should once more afford the State of Florida, acting through its legislature, an opportunity to put its legislative house in order. If this can be done we think it should be done. In attempting to solve problems of the legislative apportionment factors other than one person-one vote may loom large. Adjacent counties, neither of which has a population sufficient to have a senator or representative by itself, may be so wholly different in economic character that

it would be inadvisable to unite them for the purpose of legislative representation. We can recognize that such problems can and do exist but we have no claim to the competence required to solve them. It is the belief of the Court that the Florida legislature, as it will be constituted under the statute with the Section 1(3) senators eliminated, will have a majority such as will permit, if there be the will to do so, a correction of the malapportionment which exists under the Act. In accepting the legislative enactment as an interim measure, the Court does not overlook the prior indulgence which had been granted but we are reminded that our prior order was entered before the guidelines of Reynolds v. Sims, supra, and other decisions of the Supreme Court had been drawn. In affording a further opportunity to the Florida legislature to adopt a constitutionally acceptable apportionment, we have the confident hope that there will be a recognition, by the legislative bodies, of the paramount necessity of conforming to the constitutional requirement that "both houses of a state legislature must be apportioned on a population basis," and that the "state make an honest and good faith effort to construct districts in both houses of its legislature, as nearly of equal population as is practicable." Reynolds v. Sims, 377 U.S. 533, 577, 84 S. Ct. 1362, 12 L.Ed. 2d 506. Precise exactness cannot, of course, be achieved but only such minimal departures as necessity demands will be permitted. Variations are to be sanctioned only when they cannot be avoided. We do not think it can be assumed that the fifteen percent variance allowed in Toombs v. Forston, N.D. Ga. 1965, 241 F. Supp. 65, establishes a rule of tolerance that will be followed as a

legal principle. If the Florida legislature does not adopt a valid plan of apportionment then this Court must do so; and so that it may, if need be, do so, jurisdiction will be retained. No further action will be taken by the Court until the adjournment of the next regular session of the legislature or, in the event it shall not have enacted reapportionment legislation, until the lapse of the time required to convene and hold a legislative special session for reapportionment.

ORDER

The premises considered, it is ORDERED, ADJUDGED and DECREED that:

1. The plan of apportionment of the Florida legislature, as made by HB 19-XX enacted at its special session in 1965, in both the Senate and House of Representatives does not meet the requirements of the Equal Protection Clause of the Federal Constitution as construed and applied in Reynolds v. Sims, supra, and other decisions of the Supreme Court. The apportionment made by said statute, as herein modified, is approved as an interim plan for a period ending sixty days after the adjournment of the 1967 regular session of the Florida legislature;

2. The provisions of Section 1 (3) of said statute are in violation of the Equal Protection Clause of the Federal Constitution. The statute, and the plan of apportionment thereby enacted, are modified by deleting and striking therefrom the aforesaid Section 1 (3); and

3. The Court retains jurisdiction of this cause until such time as there shall be an adjudication that a valid plan of legislative apportionment has been enacted, or until such a plan has been made effective by a decree of this court.

DONE, ORDERED and DECREED this 23rd day of December, 1965.

/s/Warren L. Jones
Warren L. Jones
United States Circuit Judge

/s/Wm. A. McRae, Jr.
William A. McRae, Jr.
United States District Judge

/s/David W. Dyer
David W. Dyer
United States District Judge

Appendix C

Chapter 65-2440
House Bill No. 19-XX
A bill to be entitled

An act to provide for the apportionment of the membership of the senate and the house of representatives of the legislature of the state of Florida; providing for subdistricting; repealing sections 10.01, 10.02, 10.03 and 10.04, Florida Statutes; prescribing terms of of-

fice of members of both houses; providing for continuance in office by members until the general election in November, 1966; providing for continuance in office of certain senators until 1968; providing for elections; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. (1) The representation of the people of the state in the senate of the state shall continue as now constituted until the general election to be held in November, 1966. Thereafter, the representation of the senate of the state shall be as set forth in this section.

(2) The representation in the senate of the Florida legislature shall consist of fifty-eight (58) members, each representing a district, which districts are created and numbered as follows:

First district — Escambia and Santa Rosa counties, provided, however, the senator serving from the present first district shall be the senator from the first district until the general election of 1968.

Second district — Escambia and Santa Rosa counties.

Third district — Okaloosa and Walton counties, provided, however, that the senator serving from the present thirty-ninth district shall be the senator from the third district until the general election of 1968.

Fourth district — Jackson, Calhoun, Washington and Holmes counties.

Fifth district — Gulf, Liberty, Wakulla, Gadsden and Franklin counties.

Sixth district — Polk county.

Seventh district — Polk county, provided, however, that the senator serving from the present seventh district shall be the senator from the seventh district until the general election of 1968.

Eighth district — Leon county.

Ninth district — Hernando, Sumter, Citrus and Pasco counties.

Tenth district — Jefferson, Madison, Taylor, Hamilton, Columbia, Suwannee, and Lafayette counties.

Eleventh district — Pinellas county provided, however, that the senator serving from the present eleventh district shall be the senator from the eleventh district until the general election of 1968.

Twelfth district — That portion of Dade county comprising the third congressional district as it existed on June 1, 1965.

Thirteenth district — Dade and Monroe counties, provided, however, that the senator serving from the present thirteenth district shall be the senator from the thirteenth district until the general election 1968.

Fourteenth district — Pinellas county.

Fifteenth district — Baker, Bradford, Clay, Union, Putnam and Flagler counties.

Sixteenth district — Duval, Nassau, and St. Johns counties.

Seventeenth district — St. Lucie, Indian River and Martin counties.

Eighteenth district — Duval, Nassau, and St. Johns counties.

Nineteenth district — Orange and Seminole counties, provided, however, that the senator serving from the present nineteenth district shall be the senator from the nineteenth district until the general election of 1968.

Twentieth district — Orange and Seminole counties.

Twenty-first district — Duval, Nassau, and St. Johns counties.

Twenty-second district — Sarasota county.

Twenty-third district — Lake and Osceola counties, provided, however, that the senator serving from the present twenty-third district shall be the senator from the twenty-third district until the general election of 1968.

Twenty-fourth district — Lee, Hendry, and Collier counties.

Twenty-fifth district — Bay county, provided, however, that the senator serving from the present twenty-fifth district shall be the senator from the twenty-fifth district until the general election of 1968.

Twenty-sixth district — Pinellas county.

Twenty-seventh district — Marion, Dixie, Levy and Gilchrist counties.

Twenty-eighth district — Volusia and Brevard counties.

Twenty-ninth district — Hardee, DeSoto, Okeechobee, Glades, Charlotte, and Highlands counties.

Thirtieth district — Broward county.

Thirty-first district — Duval, Nassau, and St. Johns counties, provided, however, that the senator serving from the present thirty-first district shall be the senator from the thirty-first district until the general election of 1968.

Thirty-second district — Alachua county.

Thirty-third district — Duval, Nassau, and St. Johns counties.

Thirty-fourth district — Hillsborough county.

Thirty-fifth district — Palm Beach county, provided, however, that the senator serving from the present thirty-fifth district shall be the senator from the thirty-fifth district until the general election of 1968.

Thirty-sixth district — Manatee county.

Thirty-seventh district — Volusia and Brevard counties, provided, however, that the senator serving from the present thirty-seventh district shall be the senator from the thirty-seventh district until the general election of 1968.

Thirty-eighth district — Volusia and Brevard counties.

Thirty-ninth district—That portion of Dade county comprising the third congressional district as it existed on June 1, 1965.

Fortieth district — That portion of Dade and Monroe counties comprising the fourth congressional district as it existed on June 1, 1965.

Forty-first district — That portion of Dade and Monroe counties comprising the fourth congressional district as it existed on June 1, 1965, provided, however, that the senator serving from the present forty-first district shall be the senator from the forty-first district until the general election of 1968.

Forty-second district — Orange and Seminole counties.

Forty-third district — Dade and Monroe counties, provided, however, that the senator serving from the present forty-third district shall be the senator from the forty-third district until the general election of 1968.

Forty-fourth district — Dade and Monroe counties.

Forty-fifth district — Orange and Seminole counties.

Forty-sixth district — Dade and Monroe counties.

Forty-seventh district — Pinellas county.

Forty-eighth district — Dade and Monroe counties.

Forty-ninth district — Palm Beach county.

Fiftieth district — Palm Beach county.

Fifty-first district — Broward county.

Fifty-second district — Dade and Monroe counties.

Fifty-third district — Broward county.

Fifty-fourth district — Broward county.

Fifty-fifth district — Hillsborough county.

Fifty-sixth district — Hillsborough county.

Fifty-seventh district — Hillsborough county.

Fifty-eighth district — Duval, Nassau, and St. Johns counties.

(4) The even numbered senatorial districts shall be filled in the general election of November, 1966, and shall be for four-year terms. The odd numbered senatorial districts, except as to any district for which specific pro-

vision has been made herein for representation by a present senator for that district until the general election of 1968, shall be filled in the general election of November, 1966, initially for a two-year term. Thereafter, all odd numbered senatorial districts shall be filled for four-year terms.

(5) Where the same two or more counties or portions thereof are assigned more than one (1) senatorial district, no two (2) senators each representing any district comprised of said counties shall reside in the same county until each county in said district has a senator residing in said county who is a qualified elector of that county. The secretary of state shall establish for the necessary number of districts such residential qualifications for candidates as shall be required to accomplish the purposes of this subsection.

(6) Any senator elected in 1964 and designated herein by a district bearing the letter "X" may run in 1966 for a new two (2) or four (4) year senatorial office if there is a vacancy in the district of his residence, provided that prior to qualifying for the new two (2) or four (4) year term he resigns from the office to which he was elected in 1964.

Section 2. The house of representatives of the Florida legislature shall consist of one hundred nine (109) members apportioned among the counties according to the latest federal decennial census of population. Until reapportioned according to the census of 1970 the representation in the house of representatives shall be apportioned as follows:

County or Counties	Number of Members
Dade	18
Duval	9
Hillsborough	9
Pinellas	8
Broward	7
Orange	5
Palm Beach	5
Polk	4
Escambia	3
Volusia	3
Brevard	3
Sarasota	1
Leon	1
Alachua	1
Manatee	1
Bay	1
Okaloosa	2
Lake	1
Seminole	1
Lee	1
Marion	1
Monroe	1
Gadsden	1
St. Lucie	1
Pasco	1
Jackson	1
Osceola	1
Santa Rosa	1
Putnam	1
Indian River	1

County or Counties	Number of Members
Walton, Holmes, Washington	1
Gulf, Calhoun, Liberty	1
Franklin, Wakulla, Jefferson	1
Taylor, Madison	1
Lafayette, Suwannee, Hamilton	1
Columbia, Union	1
Baker, Nassau	1
Bradford, Clay	1
St. Johns, Flagler	1
Dixie, Levy, Citrus, Gilchrist	1
Hernando, Sumter	1
DeSoto, Hardee	1
Okeechobee, Martin	1
Hendry, Collier, Glades	1
Highlands, Charlotte	1

Section 3. Senators and members of the house of representatives shall reside in and be elected at large by the voters in the respective counties or districts for which they were chosen; provided, however, that when any county has more than ten (10) representatives, it shall be divided into districts by an act of this legislature, the number of such districts to be the number of representatives in excess of ten (10) and the representatives in excess of ten (10) to be a qualified elector of and reside in and be elected by the qualified electors in their respective districts.

Section 4. All senators, except as to those to be elected to new initial two (2) year terms as provided for in section one (1) herein, and except when vacancies are to be filled, are to be elected for four (4) years. Members of

the house of representatives are to be elected for two (2) years.

Section 5. The provisions of this act are severable and if any word, sentence, paragraph, subsections or sections of the act shall for any reason be held void or unconstitutional by any court of competent jurisdiction, the decision of said court shall not affect or impair the validity of any of the remaining words, sentences, paragraphs, subsections or sections of this act.

Section 6. Candidates for offices created herein shall be nominated in 1966 in the manner provided by law and the offices shall be filled at the general election November, 1966. For all other purposes, this act shall take effect at the close of the polls at the general election in 1966 and sections 10.01, 10.02, 10.03 and 10.04, Florida Statutes, shall thereupon stand repealed.

Became a law without the Governor's approval.
Filed in Office Secretary of State, July 7, 1965.

Appendix C-1

109 Representatives

Maximum Population-Variance Ratio of 4.04 to 1
50.43% of the Population elects 46.79% of the House

Counties	No. of Rep.	Total Pop.	Aver. Pop. per Rep.	Percent Variation Under Aver.	Percent Variation Over Aver.
Dade (8 by districts and 10 at large)	18	935,047	51,947		14.35
Duval	9	455,411	50,601		11.39
Hillsborough	9	397,788	44,199	2.70	
Pinellas	8	374,665	46,833		3.10
Broward	7	333,946	47,707		5.02
Sub-totals	51	2,496,857	48,958	24.30	420.75
Orange	5	263,540	52,708		16.03
Palm Beach	5	228,106	45,621		0.43
Polk	4	195,139	48,785		7.39
Escambia	3	173,829	57,943		27.55
Volusia	3	125,319	41,773	8.04	
Brevard	3	111,435	37,145	18.23	
Sarasota	1	76,895	76,895*		69.27
Leon	1	74,225	74,225		63.40
Alachua	1	74,074	74,074		63.06
Manatee	1	69,168	69,168		52.26
Bay	1	67,131	67,131		47.78
Okaloosa	2	61,175	30,588	32.67	
Lake	1	57,383	57,383		26.32
Seminole	1	54,947	54,947		20.96
Lee	1	54,539	54,539		20.06
Marion	1	51,616	51,616		13.63
Monroe	1	47,921	47,921		5.49
Gadsden	1	41,989	41,989	7.57	
St. Lucie	1	39,294	39,294	13.50	
Pasco	1	36,785	36,785	19.02	

Counties	No. of Rep.	Total Pop.	Aver. Pop. per Rep.	Percent Variation Under Aver.	Over Aver.
Jackson	1	36,208	36,208	20.29	
Putnam	1	32,212	32,212	29.09	
Santa Rosa	1	29,547	29,547	34.96	
Indian River	1	25,309	25,309	44.29	
Osceola	1	19,029	19,029†	58.11	
Walton, Holmes & Washington	1	37,669	37,669	17.08	
					(cont.)
Gulf, Calhoun & Liberty	1	20,497	20,497	54.88	
Franklin, Wakulla & Jefferson	1	21,376	21,376	52.94	
Taylor & Madison	1	27,322	27,322	39.86	
Lafayette, Suwannee & Hamilton	1	25,555	25,555	43.74	
Columbia & Union	1	26,120	26,120	42.48	
Baker & Nassau	1	24,552	24,552	45.95	
Bradford & Clay	1	31,981	31,981	29.60	
St. Johns & Flagler	1	34,600	34,600	23.83	

Counties	No. of Rep.	Total Pop.	Aver. Pop. per Rep.	Percent Variation Under Aver.	Over Aver.
Dixie, Levy, Citrus, & Gilchrist	1	26,979	26,979	40.61	
Hernando & Sumter	1	23,074	23,074	49.21	
DeSoto & Hardee	1	24,053	24,053	47.05	
Okeechobee & Martin	1	23,356	23,356	48.59	
Hendry, Collier & Glades	1	26,822	26,822	40.96	
Highlands & Charlotte	1	33,932	33,932	25.30	
Totals	109	4,951,560	45,427	997.36	997.49

* Largest population per Representative

† Smallest population per Representative

Legislative Reference Bureau
July 13, 1965

DEFENDANT'S EXHIBIT NO. II

Appendix C-2

58 Senatorial Districts

Maximum Population—Variance Ratio of 1.55 to 1

52.35% of the Population elects 48.28% of the Senate

New Sen. Dists.	Counties	No. of Sen.	Total Pop.	Aver. Pop. per Sen.	Percent Variation Under Aver.	Percent Variation Over Aver.
12, 39	North Dade					
40, 41	South Dade & Monroe					
13, 43, 44, 46, 48, 52	Dade & Monroe	10	982,968	98,297		15.14
16, 18, 21, 31, 33, 58	Duval, Nassau, St. Johns	6	502,634	83,772	1.87	
34, 55, 56, 57	Hillsborough	4	397,788	99,447		16.49
11, 14, 26, 47	Pinellas	4	374,665	93,666		9.72

DEFENDANT'S EXHIBIT NO. III

(cont.)

New Sen. Dists.	Counties	No. of Sen.	Total Pop.	Aver. Pop. per Sen.	Percent Variation Under Aver.	Percent Variation Over Aver.
30, 51, 53, 54	Broward	4	333,946	83,487	2.21	
	Sub-totals	28	2,592,001	92,571	20.06	256.24
19, 20, 42 45	Orange & Seminole	4	318,487	79,622	6.74	
35, 49, 50	Palm Beach	3	228,106	76,035	10.94	
6, 7	Polk	2	195,139	97,570		14.29
1, 2	Escambia & Santa Rosa	2	203,376	101,688(L)		19.11
28, 37, 38	Volusia & Brevard	3	236,754	78,918	7.56	
22	Sarasota	1	76,895	76,895	9.93	
8	Leon	1	74,225	74,225	13.06	
32	Alachua	1	74,074	74,074	13.23	
36	Manatee	1	69,168	69,168	18.98	

DEFENDANT'S EXHIBIT NO. III (cont'd.)

(cont.)

New Sen. Dists.	Counties	No. of Sen.	Total Pop.	Aver. Pop. per Sen.	Percent Variation Under Aver.	Over Aver.
25	Bay	1	67,131	67,131	21.37	
3	Okaloosa & Walton	1	76,751	76,751	10.10	
23	Lake & Osceola	1	76,412	76,412	10.50	
24	Lee, Collier & Hendry	1	78,411	78,411	8.15	
27	Marion, Levy, Dixie & Gilchrist	1	69,327	69,327	18.79	
5	Gadsden, Liberty, Gulf Franklin & Wakulla	1	66,897	66,897	21.64	
17	St. Lucie, Indian River, & Martin	1	81,535	81,535	4.49	
9	Pasco, Sumter, Herriando & Citrus	1	69,127	69,127	19.03	
4	Jackson, Calhoun, Holmes & Washington	1	65,723	65,723(S)	23.02	

DEFENDANT'S EXHIBIT NO. III (cont'd.)

(cont.)

New Sen. Dists.	Counties	No. of Sen.	Total Pop.	Aver. Pop. per Sen.	Percent Variation Under Aver.	Over Aver.
15	Putnam, Flagler, Clay, Bradford, Union & Baker	1	82,165	82,165	3.76	
29	Highlands, Hardee, DeSoto, Charlotte, Glades & Okeechobee	1	67,359	67,359	21.10	
10	Columbia, Hamilton, Suwannee, Lafayette, Madison, Taylor & Jefferson	1	82,497	82,497	3.37	
58	Totals	58	4,951,560	85,372	323.04	323.04

DEFENDANT'S EXHIBIT NO. III (cont'd)

(L) Largest population per Senator
(S) Smallest population per Senator
Legislative Reference Bureau
July 13, 1965

Terms of Office of Senators

New Senate District	Odds		Evens
	1964-68	1966-68	1966-70
1	1		
2			•
3	39		
4	3X		•
5	5X	•	
6			•
7	7		
8			•
9	9X	•	
10	17X		•
11	11		
12			•
13	13		
14			•
15	15X	•	
16			•
17	29X	•	
18			•
19	19		
20			•
21		•	
22			•
23	23, 33X		
24			•
25	25		
26			•
27	21X	•	

New Senate District	Odds 1964-68	Odds 1966-68	Evens 1966-70
28			•
29	27X	•	
30			•
31	31		
32			•
33		•	
34			•
35	35		
36			•
37	37		
38			•
39		•	
40			•
41	41		
42			•
43	43		
44			•
45		•	
46			•
47		•	
48			•
49		•	
50			•
51		•	
52			•
53		•	
54			•
55		•	

New Senate District	Odds 1964-68	1966-68	Evens 1966-70
56			
57			
58			
Totals	22	16	29

Legislative Reference Bureau
July 13, 1965

DEFENDANT'S EXHIBIT NO. IV

Appendix D

Chapter 65-2446

A bill to be entitled

An act relating to legislative districts when required by law; providing for the composition of districts in Dade County; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Whenever by law the county of Dade shall be required to be divided into eight (8) districts for the purposes of the residence of, and the election of, an equal number of members of the house of representatives, the said eight (8) districts shall be as follows:

The First District shall consist of the following 39 Dade County Precinicts: 2, 3, 4, 10 through 22, 24 through 30, 211, 212, 240 through 245, 248 through 251, 253 through 255, and 315.

The Second District shall consist of the following 37 Dade County Precincts: 23, 41 through 48, 68 through 72, 213 through 219, 221, 239, 246, 247, 256 through 258, 268 through 270, 282, and 5 through 9.

The Third District shall consist of the following 46 Dade County Precincts: 32 through 40, 49 through 57, 62 through 67, 73 through 79, 259 through 264, 266, 267, 271, 272, 277 through 281.

The Fourth District shall consist of the following 39 Dade County Precincts: 83 through 106, 118 through 120, 126 through 131, 222, 223 283 through 286.

The Fifth District shall consist of the following 38 Dade County Precincts: 1, 31, 58 through 61, 80 through 82, 107 through 117, 121, 144 through 146, 148, 220, 224, 252, 265, 273 through 276, 287 and 288 through 291.

The Sixth District shall consist of the following 44 Dade County Precincts: 122 through 125, 132 through 143, 147, 149 through 160, 177 through 184, 225, 292 through 295, 308, and 309.

The Seventh District shall consist of the following 40 Dade County Precincts: 161 through 176, 185 through

191, 196 through 198, 226 through 228, 296 through 299, 304 through 307, 310, 313 and 314.

The Eighth District shall consist of the following 43 Dade County Precincts: 192 through 195, 199 through 210, 229 through 237, 300 through 303, 311, 312, 316 through 326, and 238.

Section 2. As used in this act, for the purpose only of describing a representative district, the term "precinct" means those precincts existing and on file in the office of the secretary of state as of June 1, 1965.

Section 3. This act shall take effect upon becoming a law.